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No. 92-6281

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

ROBERT P. HAGEN,
Petitioner,
v.
STATE OF UTAH,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Utah

BRIEF FOR DUCHESNE COUNTY AND UINTAH COUNTY, UTAH, AS AMICI CURIAE IN SUPPORT OF RESPONDENT STATE OF UTAH

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QUESTIONS PRESENTED

In light of conflicting decisions by the Utah Supreme Court and the United States Court of Appeals for the Tenth Circuit, whether the language of the Uintah Act of May 27, 1902 (32 Stat. 245), as amended, providing that the unallotted lands of the original Uintah Indian Reservation shall be restored to the public domain, constituted clear language of disestablishment, as this Court has recognized, so as to confer criminal jurisdiction upon the State of Utah over offenses involving Indians within the area so restored to the public domain.

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INTEREST OF AMICI CURIAE

The concern that prompts the filing of this Brief can be simply stated. Prior to the recent litigation of this reservation boundary issue, this Court, the United States and the Tribe itself had taken the position that the Ute Tribe's reservation consisted of 1 million acres, not the 4 million acres encompassed within the boundaries of the original Uncompahgre and original Uintah reservations. More than 18,000 residents of Duchesne County and Uintah County thus face the prospect of being suddenly thrust into the status of residents of an Indian reservation, where their officials would have only limited jurisdiction and where they would have no elective voice in the governance of their affairs and property by the Tribe. For its part, the Ute Tribe has already enacted a comprehensive Tribal Code which, by its terms, is applicable to Indians and non-Indians alike throughout both historic reservation areas. *See, e.g., Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989). For those additional reasons, *amici* specially support the Brief of Respondent State of Utah in Support of Petition for Writ of Certiorari.

Compared to *Solem v. Bartlett*, 465 U.S. 463 (1984), *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977), *DeCoteau v. District County Court*, 420 U.S. 425 (1975), *Mattz v. Arnett*, 412 U.S. 481 (1973), or *Seymour v. Superintendent*, 368 U.S. 351 (1962), more people, more area and more resources are at stake here because of the conflicting decisions of the Utah Supreme Court and the United States Court of Appeals for the Tenth Circuit.

SUMMARY OF ARGUMENT

The Utah Supreme Court correctly concluded that the Uintah Act of May 27, 1902 (32 Stat. 245), as amended, which provided that the unallotted lands of the Uintah Reservation be restored to the public domain, constituted clear evidence of disestablishment, as this Court has recognized. In a conflicting opinion, the *en banc* majority of the court of appeals mistakenly believed that this

Court's decision in *Solem* dictated "a different result," despite the fact that in *Solem* the Court indicated that it was following a path clearly marked by its prior decisions. As a result, the *en banc* majority failed to take into account important factors uniformly understood to constitute explicit expressions of congressional intent to disestablish both the original Uintah and the original Uncompahgre Reservation. Moreover, the *en banc* majority ignored the unwavering position of the United States since 1897 that the original Uncompahgre Reservation no longer exists and paid little attention to the similarly long-standing administrative and congressional treatment of the original Uintah Reservation. In construing operative public domain language as it did, the *en banc* majority thus attempted to "remake history," which this Court admonished "cannot" be done in order to resurrect reservations that long ago ceased to exist. *DeCoteau*, 420 U.S. at 449; *accord Rosebud*, 430 U.S. at 615.

ARGUMENT

1. In 1986, after the *en banc* majority of the court of appeals in *Ute Indian Tribe v. State of Utah*, 773 F.2d 1087 (10th Cir. 1985), *cert. denied*, 479 U.S. 994 (1986), (Resp. App. 76a-137a), just fashioned the second largest Indian reservation in the country, encompassing a 90 percent non-Indian population and three million acres of non-Indian owned lands (the one million acre reservation where nearly all tribal members live was never in dispute), the United States as *Amicus Curiae* suggested that this Court wait to grant review. According to the United States, there would be time enough to grant review if the Utah Supreme Court should adhere to its prior view in some future case. Brief for the United States *Amicus Curiae* at 14-15, *Utah v. Ute Indian Tribe*, United States Supreme Court No. 85-1821 (November 1986). This Court waited, and in *State of Utah v. Hagen*, —— P.2d ——, 191 Utah Adv. Rep. 26 (1992) (Resp. App. 1a-3a), and *State of Utah v. Perank*, —— P.2d at ——, 191 Utah Adv. Rep. 5 (1992) (Resp. App. 4a-75a), the Utah

Supreme Court did just what the United States thought it might. After inviting the United States and the Ute Indian Tribe to express their views, the Utah Supreme Court reviewed the entire record (which included all briefs) submitted in *Ute Indian Tribe* and disagreed with the *en banc* majority of the court of appeals. In the process, the Utah Supreme Court specifically noted:

> This Court invited the United States Department of Justice to file an amicus curiae brief in this case because of the importance of the issue of the location of the boundaries of the Uintah-Ouray Indian Reservation . . . The Department of Justice submitted to this Court a copy of the amicus brief it filed for the United States opposing the State's petition for certiorari in *Ute Indian Tribe*. In that brief, the Department stated, inter alia, that the issues presented in the petition for a writ of certiorari did not require review by the Supreme Court at that time *because* they could be addressed in a later case if the Utah Supreme Court were to disagree with the Tenth Circuit.

Perank, Resp. App. 6a (emphasis added).

As a result, an important question in federal law has now been decided by the Utah Supreme Court and the court of appeals in a way that underscores the conflicting decisions. And now is the time for this Court to authoritatively resolve this conflict.

Squarely at issue here is the Uintah Act of May 27, 1902, 32 Stat. 245, as amended, one in the series of surplus land statutes Congress passed between 1887 and 1920 when land areas once set aside as Indian reservations were opened for settlement pursuant to § 5 of the General Allotment Act of 1887, 24 Stat. 388. In the last thirty (30) years, this Court has addressed these difficult and complex questions a number of times to resolve similar conflicts and make clear important points of law. *Solem v. Bartlett*, 465 U.S. 463 (1984); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977); *DeCoteau v. District County Court*, 420 U.S. 425 (1975); *Mattz v. Arnett*, 412 U.S. 481 (1973); *Seymour v. Superintendent*,

368 U.S. 351 (1962). The limited historical perspective of *Seymour* and *Mattz* (no disestablishment intended) was broadened considerably in *Rosebud* and *DeCoteau* (disestablishment intended), and *Solem* confirmed, while the end result could vary, congressional intent would always control. The Utah Supreme Court decided the issue within the guidelines of this precedent but the *en banc* majority did not.

In *Ute Indian Tribe*, the *en banc* majority's conclusion that *Solem* "dictates" a different result with respect to the crux of this case, i.e. the significance of operative public domain terminology, is explicitly stated:

> The original expression 'return to the public domain' does *not* reliably establish the clear and unequivocal evidence of Congress's intent to change boundaries. *Solem*, 104 S.Ct. at 1166 [majority opinion].
>
> Our *conclusion* is that the phrase 'restore to the public domain' is *not* the same as a congressional state of mind to disestablish [majority opinion].
>
> Although the district court and the panel viewed this as language of cession, I believe that *Solem dictates* a different result [concurring opinion].
>
> Prior to *Solem*, 'public domain' language could have been construed as more conclusive evidence of disestablishment; following *Solem*, the term must be viewed as *ambiguous* in portent . . . [concurring opinion].
>
> Ultimately, I interpret *Solem* to *hold* that 'public domain' language standing alone is *insufficient* to support a finding of explicit congressional intent to disestablish [concurring opinion].

Ute Indian Tribe v. Utah, Resp. App. 86a-87a, 92a-93a (emphasis added).

And the extent to which the *en banc* majority departed from the principles set forth by this Court is specifically supported in a subsequent decision by a different panel of the court of appeals, as specifically noted by the Utah Supreme Court. *Pittsburgh & Midway Coal Mining Co.*

v. Yazzie, 909 F.2d 1387 (10th Cir. 1990), *cert. denied*, 111 S.Ct. 581 (1990). *See* Resp. App. 24a-27a.

The Utah Supreme Court could have also noted that the *en banc* majority opinion was further undermined by a subsequent admission of the United States:

> "In the end, however, the court of appeals' analysis [on Uncompahgre] is *unconvincing* . . . the court of appeals *erred* in holding that the Uncompahgre Reservation was not disestablished . . . ."

Brief for the United States as *Amicus Curiae* at 18, 20, *Utah v. Ute Indian Tribe*, U.S. Supreme Court No. 85-1821 (November 1986) (emphasis added).[1]

The United States maintained, on the other hand, that the same analysis of similar documentation in the same opinion by the same *en banc* majority was essentially sound with respect to the original Uintah Reservation. Even the United States could not explain how the *en banc* majority could, consistent with this Court's precedents, resurrect a two million acre reservation when that reservation ended in 1897, and has not been treated as an Indian Reservation by the Department of the Interior or any other federal agency since then. And even the most sophisticated argument can not cover up the glaring inconsistencies inherent in such a position—especially to the extent that the Uncompahgre Acts are *in pari materia* with the Uintah Acts. *See, e.g., Oregon Dept. of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753 (1985). Properly construed, the Uncompahgre disestablishment indicia, all of which was substantially ignored by the *en banc* majority, was also present in the Uintah documents. It should have reinforced the conclusion that the original Uintah Reservation was similarly disestablished. Blinded by a fundamental misreading of *Solem*, the *en banc* majority missed its usual way in *both* instances, and the Utah Supreme Court was not remiss in

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[1] This is a significant admission because in this Court the United States has previously, without exception, argued against reservation disestablishment. *See*, n.12, *infra*.

refusing to following the same path. For this reason, a limited review of the Uncompahgre documentation is both appropriate and informative, even if the area itself is not directly at issue here.[2]

2. The original Uncompahgre reservation, created by Executive Order of January 5, 1882 (I Kappler 901) (LD 12), encompassed more than 1.9 million acres, nearly all of which is in Uintah County.[3] In the Act of August 15, 1894, ch. 20, 28 Stat. 286, 337-338 (LD 35), Congress directed that when a Presidential commission determined which lands would remain after allotments to the Uncompahgre Indians, those unallotted lands "shall, by proclamation, be restored to the public domain. . . ."[4] Three years later, pursuant to the Act of June 7, 1897 (30

[2] The *en banc* majority reestablished the original boundaries of both reservations. The offenses in *Hagen/Perank* occurred in the town of Myton, Utah, within the original boundaries of the Uintah reservation and, for the most part, the Utah Supreme Court limited its opinion to this area. (The Utah Court did question the reservation status of the one million acre addition to the Uintah National Forest (1905 Proclamation of President Roosevelt, 34 Stat. 3116) which according to the *en banc* majority is now also within the Uintah reservation (the district court and the panel agreed it was not). Resp. App. at 62a, n.28. Until 1977, the United States Department of Agriculture, Forest Service, agreed with the district court and the panel. See *Amici* App. B at 25a-29a.)

[3] The record on appeal includes a Joint Compendium of Legislative Documents and Joint Exhibits, which include Executive Orders, Presidential Proclamations and certain Secretarial Orders, complied and used by the District court. In addition to formal citation form, these sources are referred to parenthetically by their corresponding index numbers, LD 1 to LD 217, and JX 1 to JX 485. *See Ute Indian Tribe*, 773 F.2d at 1094, n.2, and *Ute Indian Tribe*, 521 F. Supp. at 1080, n.17.

[4] Importantly, the same Act directed the commission to:

> Also negotiate and treat with the Indians properly residing upon the *Uintah* Indian Reservation, in the Territory of Utah, for the relinquishment to the United States of the interest of said Indians in all lands within said reservation not needed for allotment in severality to said Indians.

28 Stat. at 337, Sec. 22 (emphasis added).

Stat. 62, 87) (LD 49), implementing the 1894 Act, approximately 12,500 acres within this area (or less than 1 percent of the original Uncompahgre Reservation) were allotted, while the remaining lands were thereafter treated as "restored to the public domain," as the Commissioner of Indian Affairs stated.[5]

There was a clear continuity of purpose between the 1894 Act containing operative public domain language (28 Stat. 337) and the 1897 Act, which mandated the opening of the original Uncompahgre reservation (30 Stat. 87). *See* Resp. App. 118a-119a. The legislative history of the 1897 Act shows that the purpose of this provision was to carry forth and implement the 1894 Act. It shows as well that the purpose remained disestablishment. The *en banc* majority did not explain how, in the face of this legislative history, Congress could have intended the original Uncompahgre reservation to remain intact. More than that, the *en banc* majority failed even to discuss the matter. (*See* Resp. App. 85a-90a.).

The record also shows that, after the opening in 1898, there was "a widely held, contemporaneous understanding . . ." (*Solem*, 465 U.S. at 471), that the Uncompahgre reservation had been disestablished. Again, the *en banc* majority does not discuss the fact that officials of the Department of the Interior immediately began to refer to and treat the area as the "former" or "late" reservation.[6] The record also reveals a firm understanding that the unallotted lands were "restored to the pub-

[5] *E.g.*, [1899] Commissioner of Indian Aff. Rept. at 543 (JX 117); [1911] Commissioner of Indian Aff. Rept. at 92 (JX 353).

[6] *See, e.g.*, [1898] Commissioner of Indian Aff. Rept. at 43 (JX 108); [1899] Commissioner of Indian Aff. Rept. at 43, 351-52 (JX 117); Letter of the Commissioner of Indian Affairs to the Secretary of the Interior, dated April 12, 1899 (JX 113); H.R. Doc. No. 33, 58th Cong., 1st Sess., at 1, 2 (1903) (letters of the Secretary and Commissioner); Letter of the Commissioner of Indian Affairs to the Secretary of the Interior, dated July 27, 1903 (JX 168).

lic domain."[7] Because these materials contain unambiguous expressions of disestablishment by government officials responsible for implementing federal Indian policy, they constitute authoritative, contemporaneous statements reflecting the intent of Congress. *See, e.g., Rosebud*, 430 U.S. at 602-03.

Moreover, the *en banc* majority failed to take into account contemporaneous legislation treating the original Uncompahgre reservation as having ended. The Act of March 1, 1899 (LD 61), for example, described the area as the "former Uncompahgre Indian Reservation." 30 Stat. 940. Because this provision was passed by the same Congress which enacted the 1897 Act (*viz.*, the 55th Congress), it constitutes compelling evidence of a congressional intent to disestablish. *See Rosebud*, 430 U.S. at 603 n.25 (significance attributed to similar legislation passed shortly after the subject act "by the same Congress. . .").

Finally, the *en banc* majority said nothing about the unwavering position of the Department of the Interior since 1897 that the original Uncompahgre reservation no longer exists, a position the federal government has taken in this Court. Memorandum for the Petitioner in Response to the Motion of the Ute Indian Tribe, at 6, *Andrus v. Utah*, 446 U.S. 500 (1980). (No. 78-1522) (September 25, 1979) [hereinafter Federal Government Memorandum in *Andrus v. Utah*]. Nor did the *en banc* majority opinion address the 1948 Act (62 Stat. 72) (LD 187)—the Hill Creek Extension—extending what was then the Tribe's existing reservation to include lands situated within the original Uncompahgre reservation, which, in the words of the Solicitor General, would have constituted "a futile act if the latter Reservation still subsisted. . . ." Federal Government Memorandum in

[7] [1899] Commissioner of Indian Aff. Rept. at 543 (JX 117); [1900] Commissioner of Indian Aff. Rept. at 615 (JX 123); [1901] Commissioner of Indian Aff. Rept. at 669 (JX 154); [1904] Commissioner of Indian Aff. Rept. at 564 (JX 198).

Andrus v. Utah, *supra*, at 5.[8] In the 1948 Act itself, Congress once more referred to the historic Uncompahgre reservation in the past tense, that is, as the "former" reservation. 62 Stat. 77 (§ 2). Moreover, "nothing since 1948 indicates any Congressional change of mind . . ." Federal Government Memorandum in *Andrus v. Utah*, *supra*, at 5.

Given its constancy, this long standing administrative and congressional treatment was entitled to considerable weight. But there it was given none, contrary to *Rosebud's* instruction that:

> the fact that neither Congress nor the Department of Indian Affairs has sought to exercise its authority over this area, or to challenge the State's exercise of authority is a factor entitled to weight as a part of the "jurisdictional history."

430 U.S. at 604.

As to this part of the region—the original Uncompahgre reservation—the *en banc* majority thus contradicted the federal government's position, taken in this Court, that the reservation ended in 1897, and has not been treated as an Indian reservation by the Department of the Interior or any other federal agency since then. Indeed, the Uncompahgre Utes, alleging that they had "lost the reservation," recovered money damages against the United States, as the government told this Court. See Petition, at p.7, in *Ute Indian Tribe v. United States*, 14 Ind. Cl. Comm. 707 (1965) (that the Uncompahgre Band of Utes "have lost the reservation set aside for their use," that the federal government "refused to provide any reservation for said Indians," and that the government did not maintain the original "Uncompahgre Reservation in Utah as a reservation.").

In *Andrus v. Utah*, 446 U.S. 500 (1980), the Ute Tribe had moved to intervene on the basis that the lands

[8] The concurring opinion at least acknowledges that the 1948 Act seems "irreconcilable with continued reservation status." Resp. App. 100a.

involved were within the original Uncompahgre reservation and that this reservation had not been disestablished. The Solicitor General opposed the Tribe's intervention on the basis that:

> The fact is that, for several decades at least, the Department of the Interior has considered the Uncompahgre Reservation as disestablished. That remains its view today. Our own review of the evidence affords no basis for disagreeing with that conclusion. . . .

Federal Government Memorandum in *Andrus v. Utah*, at 6. Among other factors, the Solicitor General pointed out that "Congress treated the Uncompahgre Reservation as a mere temporary asylum for the Ute Band of that name," "in 1965, the Ute Tribe obtained a stipulated judgment in the Indian Claims Commission to compensate it for the failure of the United States to provide the Uncompahgre Band with a permanent Reservation (*Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, 14 Ind. Cl. Comm. 707)," and "at no time since 1897 does it appear that the Department of the Interior (or any other government agency) has treated the Reservation as still in existence." *Id.* at 4-5. Moreover, the Solicitor General informed this Court that "the historic evidence *compels* the conclusion that the Uncompahgre Reservation no longer subsists." *Id.* at 5 (emphasis added).

There is more. The United States answered the Tribe's petition in the Indian Claims Commission by stating that with respect to the original Uncompahgre reservation—which the Tribe itself alleged had been disestablished—the Tribe "suffered no loss by the *restoration to the public domain* . . . of the unallotted lands within the area. . . ." Answer of the United States, at p.17 (March 9, 1954), in *Ute Indian Tribe of the Uintah and Ouray Reservation v. United States*, No. 349, 14 Ind. Cl. Comm. 707 (1965) (emphasis added). Assuming the restored-to-the-public domain provision of the 1894 Act was implemented by the 1897 Act, the *en banc* majority's point instead was that *Solem* altered the settled rule that

such language constituted a clear and unequivocal expression of disestablishment. It is on that point that the *en banc* majority erred and rendered a decision in conflict with the decisions of this Court, the lower federal courts, and now the Utah Supreme Court. Moreover, it is readily apparent that this fundamental misconception distorted the perspective from which the Uintah documents should have been viewed.

3. The Brief of Respondent in Support of Certiorari sets forth in a concise manner the general arguments that clearly demonstrate that the Utah Supreme Court was correct in its analysis of the Uintah Act, as amended, and in its conclusion—and there is no need to repeat them here. Brief of Resp. at 13-26. Even a brief summary of some of the more specific Uintah references in support of this conclusion keeps the issue in the proper historical perspective. It also reinforces the position that had the *en banc* majority not been so blinded by misreading *Solem*, it could not have ignored the combined weight of Uintah documentation. The opinion of the district court, *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1111-1150 (D. Utah 1981), the panel of the court of appeals, *Ute Indian Tribe v. State of Utah*, 716 F.2d 1298, 1307-1313 (10th Cir. 1983), and the dissenting *en banc* opinion of Judge Seth at 773 F.2d at 1108-1114 (Resp. App. 105a-137a), recount and reflect this perspective. And nothing in *Solem* or any other opinion of this Court even suggests that it could be so easily discounted, as the *en banc* majority incorrectly assumed.

We start, without argument, with the general proposition, as stated in H.R. Rep. No. 791, 50th Cong., 1st Sess. (1888) (LD 15): "[t]he policy of the Government from its earliest days has been to restore Indian reservations or portions thereof to the public domain as the exigencies of advancing population required it . . . ." *Id.* at 3: *See e.g.* T. Donaldson, *The Public Domain, Its History, with Statistics* (1884) 240-248. Congress passed the Uintah Act of May 27, 1902, 32 Stat. 245 (LD 82), with this operative public domain language expressly

stated. And prior to the passage of the 1903 Uintah Act, an amendment was proposed to the appropriations bill which provided money for the resurveying of portions of the southern and western boundaries of the Uintah Indian Reservation. 36 Cong. Rec. 1387 (LD 90). Congressman Sutherland of Utah, later to become United States Supreme Court Justice Sutherland, objected to the amendment on the basis that it would *not* serve any useful purpose. In taking this stance, Congressman Sutherland made the following remarks:

> If the Uintah Reservation is opened, which I believe it will be, this appropriation . . . for reestablishing the boundary lines of the reservation *is entirely useless*. The boundary lines have been in their present condition for many years, and if by any mischance the reservation should not be opened it will not hurt to let it wait for another year; and if the reservation is opened it is simply an appropriation . . . *without any useful purpose whatever*. . . .

36 Cong. Rec. 1388 (LD 90) (emphasis added).

Moreover, the Congressman also stated that "[t]he reservation will be *simply restored to the public domain*." *Id.* (emphasis added). The effect that the 1902 Act was intended to have on the boundaries of the Uintah Reservation was neither questioned nor disputed; in fact, the amendment which was the focus of Congressman Sutherland's remarks was apparently rejected on that basis. *See id.*

By letter dated April 27, 1903 (JX 159), the then Acting Commissioner of Indian Affairs directed United States Inspector James McLaughlin to go to Utah, explain the legislation to the Ute Tribe and obtain the consent of the Uintah and White River Utes to the allotment of their lands.[9] The instructions contained in that letter made clear that allotments were to be made and

[9] James McLaughlin was the same United States Indian Inspector who conducted the 1901 and later negotiations with the Rosebud Indians involved in *Rosebud Sioux Tribe* v. *Kneip*, *supra*, 430 U.S. at 590, 606-07, & 610.

that the unallotted lands were to be restored to the public domain. *Id.* at 4-5. Moreover, the opening of the surplus lands for public entry and settlement was characterized as a "restoration to the public domain." *Id.*

Conferences with the Utes were conducted by Inspector McLaughlin from May 18 to May 23, 1903. *See* Minutes of Councils with Uintah and White River Indians at 34 (1903) (JX 162) (hereafter Transcript). Significantly, as the Utah Supreme Court noted, the Inspector pointed out:

> [E]ach of you will have a *boundary* to your individual holdings and there will also be a *border* to that 250,000 acre tract set aside for pasturage. . . .
>
> You say that line is very heavy and that the reservation is nailed down upon the border. That is very true as applying to the past many years and up to now, but congress has provided legislation which will pull up the nails which hold down that line and after next year there will be *no outside boundary line to this reservation.*

Transcript, at 42 (emphasis added). Resp. App. 37a.

The transcript also attests that the tribal members were well informed and understood the point exactly. *See, e.g.*, Transcript at 8-9, 12-22, 30, 32-33, 39-41, 45, 48, 53-56. For example, in the Council held on May 20, 1903, Wapsoch, a Uintah Ute, stated "[w]e do not want this *reservation line* changed in any way." Transcript, at 17 (emphasis added). Later, in the same Council, Red Cap, a White River Ute, confirmed this understanding:

> The Indians have understood what they have heard, and they hold this reservation, and they do not want any of it cut off. We want this *reservation line* to be just as it is. I hold it for my children, and I don't want to part with it. I have heard talk about selling before. . . .

Transcript, at 20 (emphasis added). And, in the Council held on May 22, 1903, Parank stated as follows:

> The Indians are talking about this *reservation line* that has been put here for along time, and they can-

> not understand why it is thrown aside. It was put down a long time ago. . . . Now they are trying to *throw it aside*. . . .

Transcript, at 56 (emphasis added).

After Inspector McLaughlin completed his report, Congress revisited the issue more than once because of delays in surveys and allotments. Again the public domain references were consistent and unequivocal. Several examples include:

> Hereby provided that so much of said lands as will be *restored to the public domain* shall be open to settlement and entry by proclamation of the President . . . And further provided, that for one year immediately following *the restoration of said lands to the public domain* said lands . . .

39 Cong. Rec. 1180 (1905) (LD 103) (emphasis added).

> *Provided*, That so much of said lands as *will be under* the provision of said acts *restored to the public domain* shall be open to settlement and entry by proclamation of the President . . .

39 Cong. Rec. 1180 (1905) (LD 103) (emphasis added).

> Representative Sherman. "[T]he amendment undertakes to do this: To *restore* this [the lands to be opened for settlement] to the *public domain* on the 10th of March. . . ."

Id. at 1183 (emphasis added).

> As the manner of opening Indian reservations to entry and settlement *after the lands are restored to the public domain* is a matter that comes within the jurisdiction of the General Land Office . . .

S. Rep. No. 4240, 58th Cong., 3d Sess. at 14-16 (1905) (LD 102), letter of the Commissioner of Indian Affairs contained in that Report (emphasis added).

The Utah Supreme Court recognized minor changes in the final Uintah amendments were not intended or understood to alter this basic proposition as it related to reservation disestablishment. Resp. App. 28a-43a.[10] The proclamation of President Roosevelt, dated July 14, 1905, confirms that the Utah Supreme Court was correct. 34 Stat.

[10] As the Utah Supreme Court explained, the 1905 congressional debate also addressed the "manner of such opening", *Perank*, Resp. App. 42a-43a. Because Congress could not have considered the issue in an historical vacuum, one would expect some congressional reference to precedent—and here the precedent cited was the 1904 *Rosebud* legislation (the same Act that the *Rosebud* court held reflected the base line purpose of *disestablishment* in the *Rosebud* legislation). *Rosebud*, 430 U.S. at 592-603.

> The provisions of this [Uintah] bill (Senate Bill 6867) prescribing the manner in which the lands are to be opened are similar to the provisions under which the *Rosebud Indian Reservation* in South Dakota, ...

S. Rep. 4240, 58th Cong. 3d Sess., 15-16 (1905) (LD 102) (emphasis added).

> Representation Sherman, The idea being to have such rules and regulations as were prescribed, for instance, in the *Rosebud* Reservation opening. . . .

39 Cong. Rec. 1181 (1905) (LD 103) (emphasis added).

> [w]hereas if the opening be by registration and drawing, as was done at *Rosebud*, ...

Letter from Secretary Hitchcock to the President, as contained in 39 Cong. Rec. 1184 (1905) (LD 103) (emphasis added).

Other sources confirm this justifiable expectation:

> As stated by Hon. W.A. Edwards, Commissioner General of the United States Land Office at Washington, D.C., it is quite certain that regulations similar to those governing the opening of the *Rosebud Reservation* in Dakota last year, will obtain at the opening of the Uintah Reservation in this state. . . .

Deseret Evening News, July 8, 1905, at 5 (JX 282) (emphasis added).

> Senator Smoot was pleased with the provisions of the reservation bill, ... The manner of opening the reservation will no doubt be the same as that employed at the *Rosebud reservation*. . . .

Deseret Semi-Weekly News, March 20, 1905, at 2, (JX 236) (emphasis added).

> The opening to settlement and entry under the homestead law of the *Rosebud Indian lands* . . . was successfully accomplished, ... *Equally* successful was the opening to settlement and entry under the homestead laws on August 28, 1905, of the

3119-20 (1905) (LD 108) (emphasis added). Resp. App. 44a-47a.

More than that, one year later, when President Roosevelt made an adjustment to compensate for an erroneous homestead entry on reserved lands, he expressly set forth in a 1906 Proclamation that the tract in question was then (1906) in the "*former* Uintah Indian Reservation in Utah" and it too was "*restored to the public domain*", as the Utah Supreme Court aptly pointed out. 34 Stat. 3228 (1906) (LD 132) (emphasis added). Resp. App. 47a-48a.

And this same understanding is repeatedly confirmed in nearly every source, time and time again, throughout the entire record of the subsequent history of both original reservations. Nothing in the briefs or records in *Seymour*, *Mattz*, *DeCoteau*, *Rosebud*, or *Solem* even approaches the consistency and force of this documentation.

> unreserved and unallotted lands of the Uintah Indian Reservation in Utah, ...

Report of the Secretary of the Interior (1905) at 1495 (JX 328) (emphasis added).

> A *precedent* for the proposed [Uintah] legislation will be found in the granting of a similar privilege by the last Congress to homestead settlers upon certain lands which were *formerly* a part of the *Rosebud Indian Reservation*. . . .

S. Rep. 139, 59th Cong. 1st Sess. 2 (1906) (LD 117) (emphasis added).

> A *precedent* for the proposed [Uintah] legislation will be found in the granting of a similar privilege by the last Congress to homestead settlers upon certain lands which were *formerly* a part of the *Rosebud Indian Reservation*. . . .

H.R. Rep. 291, 59th Cong. 1st Sess. 2 (1906) (LD 119) (emphasis added).

A comprehensive thesis by the author of the study that figured prominently in the *Solem* opinion (*Solem*, 465 U.S. at 466 n.5, 477 n.21, 479 nn. 22 & 23, 480 nn. 24 & 25), expressly recognized that the Utah Uintah Act and others "followed the model" of the 1904 *Rosebud* Act. F. Hoxie, *Beyond Savagery: The Campaign To Assimilate The American Indians, 1880-1920* at 390 (Univ. Microfilms 1977).

fifteen pages of representative excerpts are set forth in *Amici* App. C.

This documentation reflects, in a variety of ways, precisely what the Commissioner of Indian Affairs at the time noted in his 1905 Annual Report when he described "the sale of the Ute lands *restored to the public domain*". [1905] Commissioner of Indian Aff. Rep. at 147 (JX 323) (emphasis added). The following year, the Commissioner repeated the point in a letter to the Secretary of the Interior that the lands were "*restored to the public domain*" and that these lands were "*former reservation lands.*" 40 Cong. Rec. 3405 (1906) (emphasis added). As early as 1906, the State of Utah formally reached this same conclusion. In a 1906 Opinion of the Utah Attorney General quoted in the March 31, 1906 edition of the *Vernal Express*, Vernal, Uintah County, Utah, the Attorney General concluded that the 1864 Uintah Reservation was no longer an existing reservation because it had become "*a part of the public domain*" and referred to it as a "*former*" Indian reservation. Appellees' Opening Brief, Add. F, *Ute Indian Tribe*, 716 F.2d 1298 (10th Cir. 1983) (emphasis added).

A decade later, the description was still the same. In a Report submitted to Congress in 1914 respecting the water rights of the Indians within the original Uintah Reservation, H.R. Doc. No. 1250, 63d Cong. 3d Sess. (September 9, 1914) (LD 149), the Secretary of the Interior stated that the surplus lands of that Reservation "*were restored to the public domain*" . . . and described the Uintah Reservation as the "*former*" Reservation. *Id.* at 2, 5 (emphasis added).

There is no question that this construction confirmed that the land was not within the boundaries of the original Uintah Reservation. In a letter to the Secretary of the Interior dated June 19, 1941 (JX 450), respecting the undisposed surplus lands of the original Reservation, the Commissioner of Indian Affairs described these lands as "lying within the *former boundaries* of the Uintah

and Ouray Indian Reservation . . . which lands were opened to entry under the Act of May 27, 1902 . . ., as amended." *Id.* at 1 (emphasis added). Later in a published Opinion of the Solicitor of the Department of the Interior dated January 27, 1947, 59 I.D. 393 (JX 454), it was noted: "Allotments were made . . ., and the balance of the lands [of the Reservation], with exceptions not here material, *were restored to the public domain* pursuant to the Act of May 27, 1902, as amended . . . ." *Id.* at 393 (emphasis added).

Until recently, not even the Ute Tribe disagreed with this conclusion. In fact, in 1957, the Ute Tribe and the United States so stated in related litigation in the Court of Claims, *Uintah and White River Bands of Ute Indians v. United States*, 139 Ct. Cl. 1 (1957). There, as the Utah Supreme Court stressed, they entered into a Stipulation, with which the Court of Claims agreed (139 Ct. Cl. at 5-6, 22), quoted the 1902 Act and then succinctly stated the critical point:

> "Pursuant to this [1902] Act and amendments thereto, more fully set out hereafter, allotments in severalty, aggregating 39,349.84 acres by 1905, were made to the Uintah and White River Indians, and surplus lands (with the exception of the forest reserve and reclamation withdrawals and certain mineral entries) *were restored to the public domain*, and opened for disposition under the public land laws for the benefit of the Indians."

See App. A to this Brief, at 1a-24a (emphasis added). Resp. App. 55a-56a. What is more, the United States (and the Ute Tribe) consistently and repeatedly maintained the original Uintah Reservation was a "*former*" reservation (*Amici* App. A, *infra*, at pp. 15a, 16a, 18a, 23a); and throughout its opinion and findings, the Court of Claims also treated the original Uintah Reservation as having ended. *E.g.*, 139 Ct. Cl. at 2, 25, 28, 56, 64, 69, 70.

This explains why, until recently, the Ute Tribe itself treated only the trust lands as the Tribe's post-1905 res-

ervation.[11] The Utah Supreme Court quoted with approval the manner in which the panel of the court of appeals relied on this acknowledgment. Resp. App. 56a. On rehearing, Judge Seth again observed:

> Statements made by the Utes themselves also tend to detract from their position. For example, the 1957 Ute Ten Year Development Program provides a description of the *total acreage of the Uintah and Ouray Reservation as currently containing 1,010,000 acres.*
> . . .

Ute Indian Tribe, Resp. App. 132a (Seth, J., dissenting) (emphasis added).

Thus, for more than half a century the lands "constituting" the Tribe's reservation were considered to be only those lands held in trust, as this Court itself recognized in *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 141 (1972), in a different context.

Finally, in other decisions rendered in prior litigation, other courts routinely interpreted the 1902 Act, as amended, in a manner that supports all of the points noted above.[12] Indeed, in 1946, the Tenth Circuit expressly held in *Hanson v. United States*, 153 F.2d 162 (10th Cir. 1946)—a decision unaccountably ignored by the *en banc* majority (but not by the Utah Supreme Court)—that the unallotted and unreserved lands of the original Uintah Reservation were "*restored to the public domain by the Act of May 27, 1902. . . .*" *Id.* at 163 (emphasis added). Resp. App. 59a.

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[11] *See, e.g.*, 1957 Ute Ten-Year Development Program, at 66-68 (JX 465); 1966 Review and Revision of the Uintah & Ouray Indian Reservation-Wide Program, at 7, 8; 1969 Annual Report of the Uintah Indian Tribe, at 1 (JX 473).

[12] *See Hanson v. United States*, 153 F.2d, at 162-63; *Uintah and White River Bands of Ute Indians*, 139 Ct.Cl., at 5-6 & 21-22; *United States v. Boss*, 160 F. 132, 132-33 (D. Utah 1906); *Sowards v. Meagher*, 108 P. 1112, 1114 (Utah 1910).

CONCLUSION

For the foregoing reasons and the reasons stated in the Petition and the Brief of Respondent State of Utah, the petition for a writ of certiorari should be granted. In addition, it may be appropirate for the Court to invite the United States to express its views in this case.[13]

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[13] Two weeks after the Utah Supreme Court decided this issue, the Ute Indian Tribe filed for injunctive relief in the United States District Court of Utah seeking to enjoin the Utah Supreme Court from enforcing its decision (even though the Utah Attorney General had previously acknowledged publicly that no one would act on the decision until this Court had an opportunity to review a petition for writ of certiorari). Brief of Resp. at 12. This renewed federal litigation, in which *amici* are named defendants again, is now proceeding on a briefing schedule, and notwithstanding the objections of defendants, that schedule is on going while this Petition is pending. For this reason, additional resources would be conserved and further divisiveness avoided *if this Court acted favorably on the Petition at this time and then invited the United States to express its views on the merits.* Also, other cases such as *Roosevelt City v. Gardner*, Case No. 910532-CA, (Utah App. November 9, 1992). [Amici App. D at 45a-47a], would then be held in abeyance. *See*, Brief of Resp. at 12.

Since *Seymour* the Court has invited the United States to express its views prior to granting certiorari in each of the reservation boundary cases it has decided. See the Orders in *Solem v. Bartlett*, 460 U.S. 1035 (1983); *Rosebud Sioux Tribe v. Kneip*, 423 U.S. 1047 (1976); *DeCoteau v. District County Court*, 416 U.S. 966 (1974); *Mattz v. Arnett*, 409 U.S. 819 (1972); *Seymour v. Superintendent*, 368 U.S. 351, 352 (1962). (In all five cases, the United States contended that reservation status had not ended. See *Solem*, 465 U.S. at 464; *Rosebud*, 430 U.S. 584, 585; *DeCoteau*, 420 U.S. 425, 426 (1975); *Mattz*, 412 U.S. 481, 482; *Seymour*, 368 U.S. 351, 352 (1962)). Here the conflict is clear. And the United States has already submitted its views to this Court in *Ute Indian Tribe* and resubmitted those same views to the Utah Supreme Court:

> If the Utah Supreme Court nevertheless should adhere to its prior view in some future case, notwithstanding the intervening decision in *Solem* and the exhaustive consideration of the issue by the courts below, *there will be time enough for this Court to grant review.*

Brief for the United States as *Amicus Curiae* at 14-15, *State of Utah v. Ute Indian Tribe*, U.S. Supreme Court No. 85-1821 (November 1986) (emphasis added).

Respectfully submitted,

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November 18, 1992

APPENDICES

APPENDIX A

No. 47569
No. 47570

THE UINTAH AND WHITE RIVER BANDS OF UTE INDIANS,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

STIPULATION

Filed January 4, 1954

IN THE UNITED STATES COURT OF CLAIMS

No. 47569

No. 47570

THE UINTAH AND WHITE RIVER BANDS OF UTE INDIANS,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

STIPULATION

It is agreed between the parties, in the above-captioned cases, for the purpose of these cases and no other purpose, as follows:

1. In pre-white times, Indians who have since come to be known as Utes, Southern Paiutes, and Shoshones lived within the territory now included in the State of Utah.

2. By Executive Order of October 3, 1861, (I Kappler 900) the "Uintah Valley" was "reserved to the United States and set apart as an Indian reservation." In the absence of an authorized survey, the area set apart was described as follows:

> ". . . the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side . . ."

The lands which are involved in the above-captioned cases are within the area so described. A copy of the said

Executive Order is appended hereto (Appendix A) and incorporated by reference.

3. By an Act of May 5, 1864, (13 Stat. 63) it was provided

> ". . . That the superintendant of Indian affairs for the Territory of Utah be, and he is hereby, authorized and required to collect and settle all or so many of the Indians of said territory as may be found practicable in the Uintah Valley, in said territory, which is hereby set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same."

A copy of the said Act is appended hereto (Appendix B) and incorporated by reference.

4. By an Act of February 23, 1865, (13 Stat. 432) ". . . to Extinguish The Indian Title to Lands In The Territory of Utah Suitable For Agricultural And Mineral Purposes [,]" the President was authorized and directed to enter into treaties with the various tribes of Indians of Utah Territory, providing for the surrender of their possessory right to all such lands, except such part as might be set apart for reservations. A copy of the said Act is appended hereto (Appendix C) and incorporated by reference.

5. Pursuant to the Act of February 23, 1865, treaties were negotiated with the "Pie-ede or Pah-Ute" Indians on September 18, 1865 (unpublished), the "Weber Ute" on October 30, 1865, (5 Kappler 698), and various groups of "Utah" Indians on June 8, 9, and 10, 1865 (5 Kappler 695). None of the said treaties was ever ratified.

6. The Indian parties to the treaty negotiated on June 8, 9, and 10, 1865, commonly referred to as the Spanish Fork Treaty, were designated therein as the ". . . Utah, Yampah Ute, Pah-Vant, Sanpete Ute, Tim-p-nogs and

Cum-nm-bah Bands of the Utah Indians occupying the lands within Utah Territory, . . ." The said treaty provided for the cession by said Indians of "all their possessory right of occupancy" to an area described therein, reserving a designated part thereof for their exclusive use and occupation as follows:

> "Art. II. There is however reserved for the exclusive use and occupation of the said tribes the following tract of lands; viz 'the entire valley of the Uintah River within Utah Territory extending on both sides of said river to the crest of the first range of contiguous mountains on each side' which said tract shall be, so far as is necessary, surveyed and marked out, set aside and reserved for their exclusive use and occupation nor shall any white person, unless he be in the employ of the Indian authorities, be permitted to reside upon the same, without permission of the said tribe, and of the Superintendent of Indian Affairs or United States Indian Agent. It is however understood that should the President of the United States hereafter see fit to place upon the reservation, any other friendly tribe or bands of Indians of Utah Territory, to occupy the same in common with those above mentioned, he shall be at liberty to do so.
>
> "Art. III. The said tribes and bands agree to remove to an settle upon the said reservation within one year after the ratification of this treaty, provided the means are furnished them by the United States to enable them to do so—In the meantime it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied if with the permission of the owner."

A copy of this unratified treaty is appended hereto (Appendix D) and incorporated by reference.

7. From time to time after 1865, various individuals and groups of Indians residing in Utah Territory, other than those who were in Uintah Valley at the time, moved into the area described in the Executive Order of October 3, 1861, and the unratified Spanish Fork Treaty of 1865, and set apart by the Act of May 5, 1864, *supra*. An Indian agency was established known as the Uintah Valley Agency, and the area became known as the Uintah Indian Reservation or the Uintah Valley Reservation. A substantial number of the said Indians, so located on the reservation, and their descendants since them have continued to live upon the reservation, have received individual allotments thereon pursuant to the Act of May 27, 1902, as amended (see paragraph 16 hereof), and are now all known as Uintah or Uintah Ute Indians. Since 1936 they have been a constituent group of the "Ute Indian Tribe of the Uintah and Ouray Reservation," an Indian Reorganization Act (48 Stat. 984) corporation, composed of Uintah, White River, and Uncompahgre Ute Indians.

8. On March 2, 1868, a treaty was concluded (and subsequently ratified and proclaimed, 15 Stat. 619) between the United States and Indian parties designated therein as "the Tabequache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Utes," "sometimes referred to thereafter as the "Confederated Bands of Ute Indians." Article II of the said treaty set apart a large reservation, wholly wihin the Territory of Colorado, for the use and occupation of the Indians therein named, and for such other friendly Indians as they might be willing to admit among them. By Article III the Indians, parties thereto, relinquished all claims and rights in and to any other territory not included within the reservation. Article IV provided for the establishment of two agencies upon the reservation, "one for the Grand River, Yampa, and Uintah bands, on White River, and the other for the Tabequache, Muache, Weeminuche, and Capote Bands on the Rio de los Pinos. . ."

The said agencies were established and Indians associated with the White River Agency in northwest Colorado came in time to be known as White River Utes or the White River Band of Ute Indians. A copy of the said treaty of 1868 is appended hereto (Appendix X) and incorporated by reference.

9. By an agreement, approved by the Act of June 15, 1880, (21 Stat. 199), with the "Confederated Bands of Ute Indians in Colorado," it was provided that the Indians would cede the then remaining portions of the Ute Reservation in Colorado. The agreement provided for stated considerations to the Indians and that reservations be established for them, as follows:

> "The Southern Utes agree to remove to and settle upon the unoccupied agricultural lands on the La Plata River, in Colorado; and if there should not be a sufficiency of such lands on the La Plata River and in its vicinity in Colorado, then upon such other unoccupied agricultural lands as may be found on the La Plata River or in its vicinity in New Mexico.
>
> "The Uncompahgre Utes agree to remove to and settle upon agricultural lands on Grand River, near the mouth of the Gunnison River, in Colorado, if a sufficient quantity of agricultural land shall be found there, if not then upon such other unoccupied agricultural lands as may be found in that vicinity and in the Territory of Utah.
>
> "The White River Utes agree to remove to and settle upon agricultural lands on the Uintah Reservation in Utah.

A copy of the said Agreement of 1880 is appended hereto (Appendix E) and incorporated by reference.

10. Pursuant to the Agreement and Act of June 15, 1880, supra, the White River Utes were removed to the Uintah Reservation beginning in about November of 1881.

Pursuant to the same Act and subsequent legislation they were given individual allotments on the Uintah Reservation, (see Paragraph 16 hereof). In general, the White River Ute Indians so removed to the reservation, and their descendants since them have continued to live upon the reservation and are a constituent group of the "Ute Indian Tribe of the Uintah and Ouray Reservation."

11. Pursuant to Section 2 of the Act of June 15, 1880, *supra*, a commission reported that it had examined the land on the Grand River near the mouth of the Gunnison, and had found insufficient suitable land for the Uncompahgre Utes. A tract of land in the valleys of the White and Green Rivers in Utah (south and east of the Uintah Reservation) was selected by the said commission and approved by the Secretary of the Interior for the settlement of the Uncompahgre Utes, who removed thereto by October 1881. The Uncompahgre Reservation in Utah was established by Executive Order of January 5, 1882, (I Kappler 901), a copy of which is appended hereto (Appendix F) and incorporated by reference.

12. An Act of May 24, 1888 (25 Stat. 157), a copy of which is appended hereto (Appendix G) and incorporated by reference, provided that a designated portion of the Uintah Valley Indian Reservation should be restored to the public domain and sold upon ratification by three-fourths of the adult-male Indians residing on the reservation. The Act provided further,

> ". . . That all moneys arising from the sales of this land shall belong to said Indians and be paid into the Treasury of the United States and held or added to any trust funds of said tribes now there."

Pursuant to this Act, lands were sold by the United States and receipts therefrom in the amount of $22,417.93 were credited to the benefit of the Uintah and White River Bands of Ute Indians. Pursuant to the Act of May 27, 1902, (32 Stat. 245, 263), as amended by the Joint

Resolution of June 19, 1902, (32 Stat. 744) (see paragraph 17 hereof), an additional $10,000 was appropriated and paid to the Uintah and White River Utes to cover claims for lands detached from the reservation pursuant to the Act of May 24, 1888, *supra.*

13. An Act of August 15, 1894 (28 Stat. 286, 337) a copy of pertinent portions of which is appended hereto (Appendix H) and incorporated by reference, directed the appointment of a commission (1) to make allotments in severalty to the Uncompaghre Indians within the reservation referred to in paragraph 11, with a provision that the Uncompaghres would be required to pay $1.25 per acre, for the lands so allotted, from out of the proceeds of the sale of their Colorado lands under the 1880 Agreement and Act; and (2) to "negotiate and treat with the Indians properly residing upon the Uintah Indian Reservation, in the Territory of Utah, for the relinquishment to the United States of the interest of said Indians in all lands within said reservation not needed for allotment in severalty to said Indians, . . ." The said commission was appointed but on January 8, 1895, reported that it had encountered difficulty in explaining to the Uncompaghres why they would be required to pay $1.25 per acre for their allotments, whereas the Indians on the Uintah Reservation would not be required to pay for their allotments. As a consequence, no allotments or agreements for cession of unallotted lands were made.

14. The Act of January 7, 1897 (30 Stat. 62, 87), the pertinent provisions of which are appended hereto (Appendix I) and incorporated by reference, directed the Secretary of the Interior to allot in severalty, to the Uncompahgre Ute Indians on the Uncompahgre Reservation, lands in the Uncompahgre Reservation, or the Uintah Reservation, or elsewhere in the State of Utah, and provided for the disposition of unallotted lands on the Uncompahgre Reservation under the public land laws. Pursuant to said Act, and the Act of June 4, 1898, (30

Stat. 429) (see paragraph 15 hereof), and the Joint Resolution of June 19, 1902 (32 Stat. 744) amending the Act of May 27, 1902 (32 Stat. 245, 263) (see paragraphs 16 and 17 hereof), Uncompahgre Indians were given allotments in severalty upon the Uncompahgre and Uintah Reservations, including ultimately 63,915.51 acres in allotments on the Unitah Reservation by 1905, and the unallotted portions of the Uncompahgre Reservation were opened for disposition under the public land laws. By the Act of May 27, 1902 (32 Stat. 245, 263), as amended by the Joint Resolution of June 19, 1902, (32 Stat. 744), (see paragraphs 16 and 17 hereof), the United States appropriated and paid to the Uintah and White River Utes, $60,064.48 which had been received from the Uncompahgres for allotments on the Uintah Reservation.

15. An Act of June 4, 1898, (30 Stat. 429) a copy of which is appended hereto (Appendix J) directed and authorized the President to appoint a commission to make allotments in severalty, with the consent of the Indians properly residing on Uintah Indian Reservation, "to the said Indians and to such of the Uncompahgre Indians as may not be able to obtain allotments within the Uncompahgre reservation," and also provided,

> "Sec. 2. That said commission shall also obtain, by the consent of a majority of the adult male Indians properly residing upon and having an interest in the said Uintah Indian Reservation, the cession to the United States of all the lands within said reservation not allotted or needed for allotment as aforesaid. The agreement for such cession shall be reported by said commission and become operative when ratified by Act of Congress; and thereupon such ceded lands shall be held in trust by the United States for the purpose of sale to citizens thereof: *Provided*, That the United States shall pay no sum or amount whatever for said lands so ceded. Said lands shall be sold in such manner and in such quantities and for such

prices as may be determined by Congress: *Provided*, That the amounts so received shall, in the aggregate be sufficient to pay said Indians in full the amount agreed upon for said lands. All sums received from the sales of said lands shall be placed in the Treasury of the United States for said Indians, and shall be exclusively devoted to the use and benefit of the Indians having interests in the lands so ceded.

16. The Act of May 27, 1902, (32 Stat. 245, 263), a copy of the pertinent portions of which is appended hereto (Appendix K) and incorporated by reference, provided for individual allotments and disposition of unallotted lands on the Uintah Reservation, as follows:

"That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unalloted lands within said reservation shall be restored to the public domain: *Provided*, That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further*, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored

to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential rights to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians. And the sum of seventy thousand and sixty-four dollars and forty-eight cents is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid to the Uintah and the White River tribes of Ute Indians, under the direction of the Secretary of the Interior, whenever a majority of the adult male Indians of said tribes shall have consented to the allotment of lands and the restoration of the unallotted lands within said reservation as herein provided.

"Said item of seventy thousand and sixty-four dollars and forty-eight cents to be paid to the Uintah and White River Utes covers claims which these Indians have made on account of the allotment of lands on the Uintah Reservation to Uncompahgre Indians and for which the Government has received from said Uncompahgre Indians money aggregating sixty thousand and sixty-four dollars and forty eight cents; and the remaining ten thousand dollars claimed by the Indians under an Act of Congress detaching a small part of the reservation on the east and under which Act the proceeds of the sale of the lands were to be applied for the benefit of the Indians.

Pursuant to this Act and amendments thereto, more fully set out hereafter, allotments in severalty, aggre-

gating 39,349.84 acres by 1905, were made to the Uintah and White River Indians, and surplus lands (with the exception of forest reserve and reclamation withdrawals and certain mineral entries) were restored to the public domain, and opened for disposition under the public land laws for the benefit of the Indians. Substantial amounts of said surplus lands were sold, and $1,184,996.33 in proceeds from such sales was set up for the benefit of the Indians under an account headed "Proceeds of Uintah and White River Ute Lands." By Order of the Secretary of the Interior, August 25, 1945 (10 F.R. 12409), a copy of which is appended hereto (Appendix L) and incorporated by reference, all undisposed-of opened lands of the former Uintah Reservation were "restored to tribal ownership for the use and benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah. . ."

17. A Joint Resolution of June 19, 1902 (32 Stat. 744), a copy of the pertinent portions of which is appended hereto (Appendix M) and incorporated by reference, supplemented and modified the Act of May 27, 1902, *supra*. The Resolution provided that,

> "In addition to the allotments in severalty to the Uintah and White River Utes of the Uintah Indian Reservation in the State of Utah, the Secretary of the Interior shall, before any of said lands are opened to disposition under any public land law, select and set apart for the use in common of the Indians of that reservation such an amount of nonirrigable grazing lands therein at one or more places as will subserve the reasonable requirements of said Indians for the grazing of livestock.
>
> "All allotments hereafter made to Uncompahgre Indians of lands in said Uintah Indian Reservation shall be confined to agricultural land which can be irrigated, and shall be on the basis of eighty acres to each head of a family and forty acres to each other Indian, and no more. The grazing land selected and

> set apart as aforesaid in the Uintah Indian Reservation for the use in common of the Indians of that reservation shall be equally open to the use of all Uncompahgre Indians receiving allotments in said reservation of the reduced area here named."

The Resolution also provided that the $70,064.48 previously appropriated by the Act of May 27, 1902, *supra*, in satisfaction of claims of the Uintah and White River Tribes of Ute Indians, as set forth in the Act (see paragraphs 12, 14, and 16 hereof), should be paid without awaiting the action of the Indians upon the program of allotments and disposition of unallotted and unreserved lands proposed by the Act of May 27, 1902, *supra*.

18. An Act of March 3, 1903 (32 Stat. 982, 997-8), a copy of the pertinent provisions of which is appended hereto (Appendix N) and incorporated by reference, provided,

> ". . . That the Secretary of the Interior shall forthwith send an inspector to obtain the consent of the Uintah and White River Ute Indians to an allotment of their land as directed by the Act of May twenty-seventh, nineteen hundred and two, and if their consent, as therein provided, can not be obtained by June first, nineteen hundred and three, then the Secretary of the Interior shall cause to be allotted to each of said Uintah and White River Ute Indians the quantity and character of land named and described in said Act: . . ."

19. The Act of March 3, 1905 § 33 Stat. 1048, 1069-1070), a copy of the pertinent provisions of which is appended hereto (Appendix O) and incorporated by reference, extended the time for opening the Uintah Indian Reservation, provided generally for the disposition of unreserved and unallotted lands under the general provisions of the homestead and town-site laws, the proceeds to be used for the benefit of the Indians, made other changes

in the provisions of the 1902 Act for the disposal of unallotted lands, and provided for reservation of forest lands and reservoir sites prior to opening, as follows:

> "That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the Act of Congress of May twenty-seventh, nineteen hundred and two, such portion of the lands within the Uintah Indian Reservation as he considers necessary, and he may also set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, and may confirm such rights to water thereon as have already accrued: *Provided*, That the proceeds from any timber on such addition as may with safety be sold prior to June thirtieth, nineteen hundred and twenty, shall be paid to said Indians in accordance with the provisions of the Act opening the reservation."

20. Pursuant to the authority granted by the Act of March 3, 1905, *supra*, approximately 1,010,000 acres of land within the Uintah Indian Reservation (more fully described hereafter) were added to and made a part of the Uintah Forest Reserve, by Proclamation of the President on July 14, 1905, (34 Stat. Pt. III 3116). A copy of said proclamation is appended hereto (Appendix P) and incorporated by reference. Quantities of timber were sold from time to time from off such lands prior to 1920, and, pursuant to the the Act of March 3, 1905, *supra*, $63,024.83 in proceeds therefrom was transferred to accounts for the benefit of the Indians, as follows: $62,724.83 to an account "Proceeds of Uintah and White River Ute Lands," and $300 to an account "Indian Moneys Proceeds of Labor, Uintah and Ouray Indians."

21. Pursuant to the authority granted by the Act of March 3, 1905, *supra*, approximtaely 93,000 acres of land in the Uintah Indian Reservation were reserved for "reservoir site necessary to conserve the water supply for the Indians, or for general agricultural development," by proclamation of the President on August 3, 1905, (34 Stat. Pt. III 3141). By Proclamation of August 14, 1905, the reservation was modified by excluding certain lands, thereby reducing the reservation to approximately 60,160 acres. The said Proclamations are appended hereto (Appendix Q) and incorporated by reference. By orders of May 13, 1907, and November 11, 1909, copies of which are appended hereto [Appendix R] and incorporated by reference, 56,868.51 acres of the 60,160 acres theretofore reserved by the above Proclamations, were withdrawn, by the Secretary of the Interior pursuant to Section 3 of the reclamation Act of June 17, 1902 (32 Stat. 388), for irrigation works for the Strawberry Valley project.

22. By the Act of April 4, 1910, (36 Stat. 269, 285), copy of the pertinent portions of which is appended hereto (Appendix S) and incorporated by reference, Congress extinguished "All right, title and interest of the Indians" in the "lands in the former Uintah Indian Reservation in the state of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the Act approved March third, nineteen hundred and five, xxx and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation Act of June seventeenth, nineteen hundred and two, in connection with the reservoir for the Strawberry Valley project." The area embraced within the above description constitutes 56,868.51 acres (see paragraph 21 hereof), more fully described in paragraph 26 hereof, and is the subject of the claim for just compensation in Docket No. 47570. The said Act of April 4, 1910, *supra*, appropriated $1.25 per acre for the lands thus taken to be paid from the reclamation fund "for the benefit of the Uintah Indians," subject to the

same disposition as the proceeds of sales of lands in the former Uintah Indian Reservation, and payable in five annual installments. Pursuant to this Act, $71,085.65 was paid into the Treasury under the fund "Proceeds of Uintah and White River Lands," in five equal installments of $14,217.13 on February 21, 1912, October 28, 1912, June 27, 1913, September 22, 1914 and February 25 1915, respectively. Under date of October 18, 1948, the Acting Commissioner of Indian Affairs, in response to a Call of this Court, reported that rentals or income from the said lands were collected between August 3, 1905, and April 4, 1910, and were paid or credited to plaintiffs, as follows: January, 1908, $10,408; September, 1908, $8,728; September, 1910, $9,945.88.

23. By an order of October 20, 1910, a copy of which is appended hereto (Appendix T) and incorporated by reference, six sections of unallotted lands within the former Uintah Indian Reservation were withdrawn from public entry, pursuant to the reclamation Act of June 17, 1902, *supra*, in connection with the Strawberry Valley reclamation project. The said lands are Sections 13, 14, 23, 24, 25 and 26, Township 4 South, Range 11 West, Uintah Special Meridian. Section 25 was within the area previously added to the Uintah National Forest by the Proclamation of March 3, 1905, *supra* (see paragraph 20 hereof). Sections 13, 14, 24, 25 and 26 were within the 60,160 acres set aside for reservoir and other purposes by the Proclamation of August 3, 1905, *supra* (see paragraph 21 hereof), and constitute the balance of that area not taken by the Act of April 4, 1910, *supra*, (see paragraph 22 hereof). Such right, title, and interest as plaintiffs may have had to the said Sections 13, 14, 23, 24, and 26 has not been (Tr. 184) extinguished, and no claim with reference to the said lands is included in either Docket No. 47569 or 47570. Said Section 25 was added to and made a part of the Uintah Forest Reserve by the Proclamation of July 14, 1905, *supra*, pursuant to the Act of March 3, 1905, *supra* (see paragraphs 19 and 20 hereof),

and the claim for just compensation based upon the said Section 25 is included in Docket No. 47569.

24. The Act of February 13, 1931, (46 Stat. 1092), a copy of which is appended hereto (Appendix U) and incorporated by reference, provided for payment for 973,777 acres of the 1,010,000 acres of land added to the Uintah National Forest on July 14, 1905 (see paragraph 20, *supra*), in the following terms:

> ". . . That there is hereby authorized to be appropriated the sum of $1,217,221.25 for payment, at the rate of $1.25 per acre, to the Uintah, White River, and Uncompahgre bands of Ute Indians in the State of Utah for nine hundred and seventy-three thousand seven hundred and seventy-seven acres of land belonging to such Indians being a part of the one million and ten thousand acres of land withdrawn from entry and sale by an Executive Order dated July 14, 1905, and included within the Uintah National Forest. Such sum shall be in full satisfaction of all claims of said Indians against the United States with respect to such lands and shall, when appropriated, be apportioned by the Secretary of the Interior among the said bands of Indians in such amounts as in his opinion the interests of said bands require: *Provided*, That as to the balance of said one million and ten thousand acres, amounting to thirty-six thousand two hundred and twenty-three acres, which has heretofore been classified as coal lands, the Secretary of the Interior shall proceed with all convenient speed to ascertain the value thereof and report his findings with respect thereto to the Congress not later than six months after the approval of this Act for such action as to the Congress shall seem appropriate. The amounts so apportioned, less the amount of the attorneys' fees determined as provided in section 2, shall be credited to such bands on the books of the Treasury Department, shall bear interest at the rate

of 4 per centum per annum and shall be disposed of in the same manner as now or hereinafter provided by law for the disposition of other funds belonging to said Indians."

Pursuant to said Act, $1,217,221.25 was set up on the books of the United States Treasury under the heading "Payment to Uintah, White River, and Uncompahgre Ute Indians of Utah for Lands." After payment of attorneys fees, $1,162,221.25 of said amount was transferred to the "Uintah, White River and Uncompahgre Ute 4% Fund, Utah", $1,146,319.50 of said funds was distributed *per capita* to the Uintah, White River, and Uncompahgre Bands of Ute Indians in the years 1935, 1936, and 1938. It is stipulated that for purposes of case No. 47569 Uncompahgre Indians received the benefit of $\frac{430}{1191}$ of the proceeds of the Act of February 13, 1931, *supra*.

25. The area of the former Uintah Reservation which was added to the Uintah National Forest by Proclamation of July 14, 1905, supra, and in payment for which $1.25 per acre was appropriated by the Act of February 13, 1931, *supra*, being the area for the taking of which just compensation is sought in No. 47569, constitutes 973,777 acres, and is described as follows:

Beginning at the northeastern most point of the former Uintah Indian Reservation; thence in a southerly direction down the eastern boundary of the said Reservation to the section line between Sections twenty-one (21) and twenty-eight (28), Township two (2) North, Range one (1) East, Uintah Meridian; thence westerly to the south-west corner of Section nineteen (19), Township two (2) North, Range one (1) West; thence northerly to the south-east corner of Section thirteen (13), Township two (2), North, Range two (2) West; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of Section twelve (12), said township;

thence westerly to the south-west corner of Section four (4), said township; thence northerly to the north-west corner of said section; thence westerly to the north-east corner of Section four (4), Township two (2) North, Range three (3) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-east corner of Township one (1) North, Range six (6) West; thence southerly to the south-east corner of Section thirteen (13), said township; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section eleven (11), said township; thence northerly to the north-west corner of said section; thence westerly to the north-east corner of Section eight (8), said township; thence southerly to the south-east corner of Section seventeen (17), said township; thence westerly to the north-east corner of Section twenty-one (21), Township one (1) North, Range nine (9) West; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section nineteen (19), said township; thence southerly along the range line, allowing for the proper offset on the Base Line, to the north-west corner of Section eighteen (18), Township one (1) South, Range nine (9) West; thence easterly to the north-east corner of Section sixteen (16), Township one (1) South, Range eight (8) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-east corner of Section four (4), Township two (2) South, Range ten (10) West; thence southerly to the south-east corner of Section sixteen (16), said township; thence westerly to the south-west corner of Section eighteen (18), said township; thence southerly to the south-east corner of Township two (2) South, Range eleven (11) West; thence westerly to the south-west corner of Section thirty-three (33), said township; thence northerly to the south-east corner of Section twenty (20),

said township, thence westerly to the south-west corner of said section, thence northerly to the south-east corner of Section seven (7), said township; thence westerly to to the south-west corner of said section; thence northerly to the north-west corner of said township; thence westerly to the north-east corner of fractional Section four (4), Township two (2) South, Range twelve (12) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence easterly to the north-east corner of Section three (3), Township three (3) South, Range twelve (12) West; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section eleven (11), said township; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section thirteen (13), said township; thence southerly to the south-east corner of Township four (4) South, Range twelve (12) West; thence easterly to the south-west corner of Section eleven (11) West; thence northerly to the north-west corner of said section; thence easterly to the south-west corner of Section twenty-five (25), said township; thence northerly to the north-west corner of said section; thence easterly to the north-east corner of Section thirty (30), Township four (4) South, Range ten (10) West; thence southerly to the south-east corner of Section thirty-one (31), said township; thence easterly to the south-west corner of Township four (4) South, Range nine (9) West; thence northerly to the north-west corner of Section thirty (30), said township; thence easterly to the north-east corner of Section twenty-five (25), said townhsip; thence southerly to the south-east corner of said township; thence easterly to the north-east corner of Section five (5), Township five (5) South, Range eight (8) West; thence southerly to the south-east corner of Section seventeen (17), said township; thence westerly to the south-west corner of Section eighteen (18), said township; thence southerly to the south-east corner of Section twenty-four (24), Township five (5) South, Range nine (9) West; thence westerly to the north-east corner of Section twenty-eight (28), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section twenty-nine (29), said township; thence southerly to the north-west corner of Section twenty-nine (29), Township six (6) South, Range nine (9) West; thence easterly to the south-west corner of Section twenty-one (21), Township six (6) South, Range eight (8) West; thence northerly to the north-west corner of Section four (4), said township; thence easterly to the eastern boundary of the Uintah Indian Reservation; and thence along the said Indian Reservation boundary, first in general southwesterly, then a westerly, then a northwesterly and north, and then an easterly direction back to the point of beginning;

Excepting therefrom approximately 36,223 acres, classified as coal lands, and more particularly described as follows:

Township 1 south, range 8 west, Uintah meridian, Utah: North half, and the north half of the south half of section 16; section 17; lots 2, 3, and 4, and the southeast quarter of the northwest quarter, and the east half of the southwest quarter, and the northeast quarter of the northeast quarter, and the south half of the northeast quarter, and the southeast quarter of section 18; lot 1, and the northeast quarter of the northwest quarter, and the north half of the northeast quarter of section 19.

Township 1 south, range 9 west, Uintah meridian, Utah; Southeast quarter of the northeast quarter, and the south half of section 13; south half of the south half of section 14; south half of the south half of section 15; the northwest quarter of the southwest quarter, and the south half of the south half of section 16; southwest quarter of the northeast quarter, and the south half of the northwest quarter, and the south half of section 17; section 18; lots 1, 3, and 4, and the northeast quarter of the northwest quarter, and the east half of the southwest quarter,

and the north half of the northeast quarter, and the southeast quarter of section 19; section 20; section 21; section 22; section 23; north half and the southwest quarter, and the northwest quarter of the southeast quarter of section 24; the northwest quarter of the northwest quarter of section 25; the north half of section 26; north half of section 27; the north half of section 28; the north half and the east half of the southwest quarter and the north half of the southeast quarter of section 29; lots 1, 2, and 3, and the east half of the northwest quarter, and the northeast quarter of section 30.

Township 1 south, range 10 west, Uintah meridian, Utah: The south half of the south half of section 10; the south half of the south half of section 11; the south half of the south half of section 12; section 13; section 14; section 15; section 16; the northeast quarter and south half of the northwest quarter, and the south half of section 17; the southeast quarter of the northeast quarter, and the southeast quarter of the southwest quarter, and the southeast quarter of section 18; section 19; section 20; section 21; section 22; section 23; section 24; the north half and the north half of the south half of section 25; section 26; section 27; section 28; section 29; the east half and lots 1, 2, 3, and 4, and the east half of the west half of section 30; lots 1, 2, 3, and 4, and the east half of the west half and the east half of section 31; section 32; the north half and the north half of the southwest quarter of section 33; the northeast quarter of the northeast quarter, and the west half of the northeast quarter, and the northwest quarter of section 34; the north half of the north half of section 35.

Township 1 south, range 11 west, Uintah meridian, Utah: Lots 1, 2, 3, and 4, and the east half of the west half, and the southeast quarter of section 18; section 19; the northwest quarter of the northwest quarter and the south half of the northwest quarter and the southwest quarter and the west half of the southeast quarter of

section 20; the east half and the the east half of the northwest quarter and the northeast quarter of the southwest quarer of section 25; the west half of the southwest quarter and the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section 28; section 29; section 30; the northeast quarter, and lots 1, 2, 3, and 4, and the east half of the west half, and the southeast quarter of section 31; section 32; section 33; section 34; the west half of section 35; the northeast quarter and the east half of the southeast quarter of section 36.

Township 1 south, range 12 west, Uintah meridian, Utah: Lots 1, 2, 3, and 4, and the south half of the south half of section 12; section 13; section 24; the northeast quarter, the northwest quarter, and the southeast quarter of section 25.

Township 2 south, range 10 west, Uintah meridian, Utah: Section 4, section 5; section 6; section 7; section 8; section 9.

Township 2 south, range 11 west, Uintah meridian, Utah: Lots 3 and 4 of section 2; lots 1, 2, 3, and 4, and the south half of the north half and the south half of section 3; lots 1, 2, 3, and 4, and the south half of the north half and the south half of section 4.

26. That area of the former Uintah Reservation reserved for reservoir and other purposes by Proclamations of August 3 and August 4, 1905 *supra*, and withdrawn for the Strawberry Valley reclamation project by orders of May 13, 1907, and November 12, 1909, as to which all right, title, and interest of the Indians was extinguished by the Act of April 4, 1910, *supra*, being the area for the taking of which just compensation is sought in No. 47570, constitutes 56,868.51 acres and is described as follows:

Uintah Special Meridian, Section 18, 19, 29, 30, 31 and 32, Township 2 South, Range 11 West;

Sections 1 to 36 inclusive, Township 3 South, Range 11 West;

Sections 1 to 12, inclusive, 15 to 22, inclusive, and Sections 27 to 32, inclusive, Township 4 South, Range 11 West;

Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36, Township 2 South, Range 12 West;

Sections 1, 2, 12, Township 3, South, Range 12 West.

/s/ ERNEST L. WILKINSON
ERNEST L. WILKINSON
Attorney of Record for Plaintiffs

/s/ PENNY W. MORTON
Assistant Attorney General

/s/ FLOYD L. FRANCE
Attorney for the United States

APPENDIX B

UNITED STATES
DEPARTMENT OF AGRICULTURE
FOREST SERVICE
324 25th Street
Ogden, Utah 84401

APR 8 1977

Honorable Scott M. Matheson
Governor of Utah
State Capitol
Salt Lake City, Utah 84114

Dear Governor Matheson:

We have reviewed the Ute Indian Tribe Resolution, 76-125, and Discussion Draft Agreement Between the State of Utah and the Ute Tribe on Civil and Criminal Jurisdiction dated March 25, 1977. There are certain sections in the Resolution and the draft Agreement which would affect the management of portions of the Ashley, Uinta, and Wasatch National Forests. We appreciate your consideration of our concerns relating to these sections.

The Indian Resolution essentially proposes, in items 10 and 11, to give certain property and jurisdictional rights vested in the State of Utah and the United States within the original exterior boundary of the Uintah and Ouray Reservation to the Ute Indian Tribe. It is proposed in item 11 that the Ute Indian Tribe be given hunting and fishing rights without regard to State laws and in item 10 full control of camping and recreation on 989,000 acres of National Forest land which they have related to the Central Utah Project.

The National Forest lands included within the original exterior boundary of the Uintah and Ouray Reservation provide a wide range of goods and services to the public.

Recreation use of this area, which includes 6 reservoirs and 31 lakes which will be stabilized, is and will be heavy. Much of the High Uintas Primitive Area is also encompassed within the boundary. Over 400,000 visitor days of use were recorded during 1975. Some of the recreation areas within this boundary now or to be constructed are the Strawberry, Current Creek, Whiterocks, and Upper Stillwater Reservoirs.

Under Definitions, item (d), non-trust lands; item (e), original exterior boundaries, and the comments under item 3, *Present Conflict*, we believe that the original Reservation boundaries were disestablished and the present Reservation boundaries include only the trust lands. The Act of March 3, 1905 (33 Stat. 873, 1070), authorized the establishment of the Uinta National Forest, which was accomplished by Presidential proclamation on July 14, 1905. The Presidential proclamation removed the lands from the Uintah and Ouray Reservation and placed them within the Uinta Forest Reserve to be subject to laws, rules, and regulations governing Forest Reserves. On February 13, 1931, Congress appropriated the sum of $1,217,221.25 to be paid to the Ute Indian Tribe for full satisfaction for lands taken in 1905, except for 36,223 acres which had been classified as coal lands. Public Law 84-717 under the Act of July 14, 1956, provided for settlement of the claims on the remaining 36,223 acres. Pursuant to formal stipulation of the parties, a consolidated judgment was entered by the Court of Claims for this case, No. 47569, and four vested cases Nos. 87568, 47510, 47511, and 47572, in favor of the plaintiffs and against the defendants in the amount of $3,250,000 in full settlement of all claims arising out of the five cases. Through these actions jurisdiction and tribal claims to the lands within the National Forest were disposed of and all rights, title, and interests to the lands were acquired by the United States. Since all of the Indian rights to these lands were acquired by the United States, there is no basis for considering them as part of

the Reservation. The boundaries of the Reservation would be in common with the exterior National Forest boundaries established by the 1905 proclamation and would not extend to the boundaries as established by Executive Order of October 3, 1861.

Item 3, *Present Conflict*, would provide the Tribe certain jurisdictional protections on non-trust lands where vital Indian interests are at stake. We believe the Agreement is referring to the hunting and fishing rights of tribal members as indicated under items 4 and 5. Item 4 states that the Ute Indian Tribe, "shall have the right to hunt, fish, boat, and trap within the original exterior boundaries of the Uintah and Ouray Reservation" and, "In addition, the Tribe agrees to regulate hunting, fishing, and trapping practices of the members of the Tribe so as to insure the maintenance of a proper biological balance between populations and available habitat. . . ." It further provides, "that all leases of such public lands entered into after the date of this Agreement shall recognize the hunting and fishing rights of tribal members free from any such consent or permission by the lessee."

The only reference we have been able to find concerning rights of the Indians to hunt and fish is in the unratified treaty of June 8, 1865, and October 30, 1865, which included the Utah Yampah Ute, Pah-vant, Sanpete Ute, Trim-p-nogs, and Cum-nm-bah Bands of the Utah Indians. Article 1 of this treaty indicates that the Indians would surrender and relinquish to the United States all their possessory rights of occupancy in the lands claimed and occupied by them within the areas of the thirty-eight and forty-first parallel in Utah. This area includes the width of the State and extends southward from approximately the south boundary of Wyoming to the thirty-eight parallel, which is approximately twenty miles north of Cedar City. Article IV of this unratified treaty states, "The right of taking fish at usual and accustomed grounds and stations is further reserved to said Indians in com-

mon with all white citizens of the Territory and of erecting temporary houses for the purpose of curing them, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands."

This unratified treaty would indicate that the fishing and hunting rights of the Ute Tribe could include approximately 75 percent of the State of Utah. If the State recognizes the Tribe's rights to hunt and fish within the 1861 reservation boundaries on the 989,000 acres on which all rights were acquired from the Indian Tribe, then it is possible the Tribe could assert an even stronger claim to hunting and fishing rights to the lands described in the 1865 unratified treaty.

Item 4 provides that all leases of public land entered into after the date of the Agreement shall recognize the hunting and fishing rights of tribal members free from any consent or permission by the lessee. Item 6 provides, "The parties recognize their mutual interest in protecting environmental values from damage that might result from uncontrolled growth of public recreational facilities within the original exterior boundaries of the Reservation. The parties therefore agree that the United States shall consult with the State and the Tribe on all plans, construction, developments, and operations of facilities within the original exterior boundaries of the Reservation pertaining to camping, obating, fishing, and other forms of public recreation." These items should either be deleted from the Agreement or modified to pertain only to tribal lands. The United States through the Secretary of Agriculture and the Forest Service is responsible for the administration of the National Forest lands, which includes the development of recreation facilities. These rights cannot be subordinated or diminished through agreement between the State and the Ute Indian Tribe. The only way these rights can be transferred to the Indian Tribe is by an Act of Congress or adjudication in a Federal Court.

We appreicate the opportunity to provide this information. We want to fully participate in any further deliberations on these issues.

Sincerely,

/s/ VERN HAMRE
VERN HAMRE
Regional Forester

APPENDIX C

LEGISLATIVE AND ADMINISTRATIVE DOCUMENTS CONFIRMING DISESTABLISHMENT OF ORIGINAL UINTAH RESERVATION

Doc. No.	Date	Type of Document	Status Reference
LD 116	Jan. 15, 1906	40 Cong. Rec. 1064	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 116	Jan. 10, 1906	40 Cong. Rec. 1332	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 117	Jan. 12, 1906	Senate Report 139, 59th Cong., 1st Sess.	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 119	Jan. 18, 1906	House Report 291, 59th Cong., 1st Sess.	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 120	Jan. 27, 1906	34 Stat. 9	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 122	Feb. 9, 1906	House Report 823, 59th Cong., 1st Sess.	". . . Indians on the former Uintah Reservation. . ."

JX 331	Apr. 11, 1906	Opinion of the Asst. Atty. General, 34 I.D. 549	". . . the lands formerly within the Uintah Indian Reservation. . ." (at 549-550)
LD 124	Apr. 13, 1906	Senate Report 2561, 59th Cong., 1st Sess. at 131	". . . the former Uintah Reservation. . ."
LD 126	June 8, 1906	Letter from Acting Commr. of Indian Affairs, found in Sen. Rep. 4263, 59th Cong., 1st Sess. at 2-3	". . . the former Uintah Reservation. . ." (at 2, first paragraph)
LD 126	June 11, 1906	Letter from Sec. of Interior, found in Sen. Rep. 4263, 59th Cong., 1st Sess. at 1	". . . the former Uintah Reservation. . ." (at 1, first paragraph)
LD 127	June 21, 1906	34 Stat. 325, 375-376	". . . the former Uintah Reservation. . ."
LD 128	June 25, 1906	House Rep. 5010, 59th Cong., 1st Sess.	". . . the former Uintah Reservation. . ."
LD 129	June 29, 1906	34 Stat. 611	". . . the former Uintah Indian Reservation. . ."
LD 130	June 12, 1906	40 Cong. Rec. 8306	". . . the former Uintah Indian Reservation. . ."
LD 130	June 27, 1906	40 Cong. Rec. 9386	". . . the former Uintah Indian Reservation. . ."

Doc. No.	Date	Type of Document	Status Reference
LD 131	1906	40 Cong. Rec. Index Senate Bill 321	". . . lands which were heretofore a part of the Uintah Indian Reservation. . ."
LD 131	Apr. 24, 1906	40 Cong. Rec. 3553	". . . for Indians in the late Uintah Indian Reservation. . ."
LD 132	Sept. 1, 1906	Proclamation 34 Stat. 3228	". . . the former Uintah Reservation. . . (at 3228, last paragraph) ". . . are hereby restored to the public domain." (at 3229, first full paragraph
JX 336	Sept. 26, 1907	Letter from and to the Acting Commr. of Indian Affairs, respectively	". . . the former Uintah Reservation, Utah. . ." (at 1, first paragraph; at 3, first paragraph)
JX 338	Nov. 8, 1907	Letter from First Asst. Secty. of the Interior	". . . the former Uintah Reservation in Utah. . ." (at 1)
JX 339	Nov. 11, 1907	Letter from Chief Clerk of the Office of Indian Affairs	". . . the former Uintah Reservation in Utah. . ." (at 1)
LD 135	Apr. 30, 1908	35 Stat. 70, 95	". . . lands of any Indian of the former Uintah and Uncompahgre Reservations. . ."

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LD 136	Dec. 16, 1908	Letter from Commr. of Ind. Affairs, loctaed in House Doc. 1279, 60th Cong. 2d Sess. at 2-3	". . . the former Uintah Reservation (at 2, second full paragraph; 3, last paragraph in letter
LD 136	Dec. 19, 1908	Letter from Secty. of the Interior, located in House Doc. 1279, 60th Cong. 2d Sess. at 1-2	". . . the former Uintah Reservation" (at 2, seventh line)
JX 341	Dec. 19, 1908	Letter from the Secty. of the Interior to the Secty. of Treasury	". . . the former Uintah Reservation." (at 1, first paragraph; 2, first paragraph; 3 last paragraph; 6, last line)
LD 137	Feb. 24, 1909	35 Stat. 644	". . . the former Ute Indian Reservation. . ."
LD 138	Feb. 14, 1910	Sen. Rep. No. 219, 61st Cong., 2d Sess.	". . . the former Uintah Reservation. . ." (Note: the words "former Uintah Indian Reservation also appear in the title of the report.)
LD 139	Apr. 4, 1910	36 Stat. 269, 285	". . . the former Uintah Indian Reservation. . ." ". . . the ceded Uintah Indian Reservation. . ."

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Doc. No.	Date	Type of Document	Status Reference
JX 343	July 9, 1910	Letter from the Acting Secty. of the Interior, 39 I.D. 79	". . . the former Uintah Indian Reservation. . ." (at 79, first paragraph)
JX 345	Feb. 3, 1911	Letter from Commr. of Indian Affairs	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)
LD 141	Mar. 31, 1911	36 Stat. 1058, 1074	". . . the former Uintah Indian Reservation. . ." "the ceded Uintah Indian Reservation. . ."
JX 346	May 1, 1911	Letter from Supt. of Irrigation	". . . the former Uintah Reservation, Utah. . ." (at 1, block quote)
JX 347	May 16, 1911	Letter from Acting Commr. of Indian Affairs	". . . the former Uintah Indian Reservation. . ." (at 1)
JX 348	May 19, 1911	Letter from first Asst. Secty. of the Interior	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)
JX 349	June 3, 1911	Letter from second Asst. Secty. of the Interior	". . . the former Uintah Reservation. . ." (at 1, first paragraph)

JX 351	June 27, 1911	Letter from Asst. Commr. of Indian Affairs	". . . the former Uintah Reservation. . ." (at 1, first paragraph)
JX 352	July 12, 1911	Letter from First Asst. Secty. of the Interior	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)
LD 146	Sept. 23, 1911	Letter from Chief Supervisor, contained in H.R. Doc. 892, 62d Cong. 2d Sess. (July 27, 1912) at 8	". . . the former Uintah Indian Reservation. . ." (at 8, first paragraph of letter to Means)
LD 146	Sept. 30, 1911	Joint Rept. by Special Inspectors to the Secty. of the Interior, contained in H.R. Doc. 892, 62d Cong. 2d Sess. (July 27, 1912) at 1-2	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph) ". . . and there were restored to the public domain . . . 1,004,005 acres. . ." (at 2, fourth paragraph)
JX 356	June 1, 1912	Letter from Supt. of Uintah & Ouray Agency	". . . formerly a part of the Uintah and White River Indian Reservation. . ." (at 1)
LD 142	June 15, 1912	Sen. Rep. No. 893, 62d Cong. 2d Sess.	". . . the former Uintah Indian Reservation. . ."
JX 357	July 2, 1912	Letter from Second Asst. Commr. of Indian Affairs	". . . formerly a part of the Uintah and White River Indian lands. . ." (at 1, first paragraph)

Doc. No.	Date	Type of Document	Status Reference
LD 143	July 8, 1912	H. Rep. No. 943, 62d Cong. 2d Sess.	". . . the former Uintah Indian Reservation. . ."
LD 144	July 15, 1912	48 Cong. Rec. 9012	". . . the late Uintah Reservation. . ."
LD 145	July 20, 1912	37 Stat. 196	". . . land which was formerly a part of the Uintah Indian Reservation. . ." (first paragraph
JX 358	Aug. 8, 1912	Letter from Commr. of General Land Office	". . . land which was formerly a part of the Uintah Reservation. . ." (at 148)
JX 359	October 1912	Dept. of the Interior Memorandum	". . . restored to the public domain. . ." (at 1, line 3) ". . . the former Uintah Reservation." (at 1, line 13) ". . . the former reservation lands. . ." (at 2, line 11) ". . . this is no longer an Indian Reservation. . ." (at 3-4)
JX 361	June 7, 1913	Letter from Second Asst. Commr. of Indian Affairs	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)

JX 363	May 12, 1914	Letter from Commr. of Indian Affairs	". . . the former Uintah reservation. . ." (at 1, first paragraph)
LD 149	Dec. 7, 1914	Letter from Secty. of the Interior, located in H. Doc. 1250, at 2-3	". . . and there were restored to the public domain . . . about 1,004,285 acres. . ." (at 2, sixth paragraph) ". . . the former Uintah Indian Reservation. . ." (at 2, last paragraph; 3, block quote-last line)
JX 366	Feb. 9, 1915	Letter from Commr. of Indian Affairs	". . . the former Uintah Indian reservation. . ." (at 1, first paragraph)
JX 367	May 29, 1915	Letter from Asst. Commr. of Indian Affairs	". . . the former Uintah reservation. . ." (at 1, first paragraph)
JX 376	Apr. 15, 1916	Letter from Secty. of the Interior	". . . lands within their former treaty reservation. . ." (at 9, second full paragraph)
JX 377	Apr. 26, 1916	Letter from Asst. Attorney General	". . . the former Uintah Reservation. . ." (at 1, first paragraph)
JX 378	May 3, 1916	Letter from Acting Asst. commr. of Indian Affairs	". . . the former Uintah Reservation. . ." (at 1)

Doc. No.	Date	Type of Document	Status Reference
JX 379	Aug. 10, 1916	Bill of Complaint in case brought by Secty. of the Interior	". . . as Trustee of the Indians of the former Uintah and Ouray Indian Reservation," (at 1, caption; 2, first line)
JX 382	Jan. 24, 1917	Letter from Asst. Secty. of the Interior	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)
JX 383	Feb. 23, 1917	Letter from Asst. Secty. of the Interior	". . . the former Uintah and Ouray Reservation. . ." (at 1, first paragraph)
JX 385	May 19, 1917	Letter from Commr. of Indian Affairs	". . . Indian lands formerly within the Uintah Reservation. . ." (at 1, first paragraph)
JX 388	Feb. 28, 1918	Letter from Sen. Smoot	". . . the former Uintah Indian Reservation. . ." (at first paragraph)
JX 389	Mar. 9, 1918	Letter from Commr. of Indian Affairs	". . . the former Uintah Indian Reservation. . ." (at 1, first paragraph)

JX 390	Apr. 13, 1918	Letter from Asst. Secty. of the Interior	". . . the former Uintah Reservation. . ." (at 1, first paragraph)
JX 391	June 11, 1918	Letter from Sen. Smoot	". . . the former Uintah Reservation. . ."
JX 392	Dec. 3, 1918	Letter from Asst. Attorney General	". . . the former Uintah Reservation. . ." (at 1, first paragraph)
LD 154	Apr. 23, 1920	H. Rep. 901, 66th Cong. 2d Sess, at 1	". . . to the unsold lands formerly included in the Uintah Indian Reservation. . ."
JX 401	Mar. 20, 1922	memorandum from Chief Supervisor of Forests	". . . the former Uintah Indian Reservation. . ." (at 1, second paragraph)
LD 155	May 14, 1920	41 Stat. 599-600	". . . lands in the former Uintah Indian Reservation. . ."
LD 179	Sept. 7, 1922	Letter from Secty. of the Interior, located in H. Rep. No. 370, 77th Cong. 1st Sess. (April 3, 1941) at 9, 12	". . . former Uintah Indian Reservation. . . (at 9, first and last paragraphs; at 12, first and last paragraphs)
JX 403	Sept. 28, 1922	Letter from Commr. of General Land Office	"ceded Uintah lands" (at 1, first paragraph) "The lands within said former

Doc. No.	Date	Type of Document	Status Reference
			reservation. . ." (at 1, second paragraph)
LD 159	Feb. 17, 1923	H. Rep. 1633, 67th Cong. 4th Sess. at 1	". . . lands in the former Uintah Indian Reservation. . ." (at 1) "These lands were formerly embraced in the Uinta Indian Reservation. . ." (at 2, fourth paragraph)
LD 162	Feb. 11, 1927	H. Rep. No. 2047, 69th Cong. 2d Sess. at 3	". . . ceded lands"
JX 413	July 27, 1927	Letter from Act. Commr. of General Land Office	". . . former Uintah Indian Reservation. . ." (at 1, second paragraph)
JX 419	Apr. 13, 1929	Letter from Commr. of Indian Affairs	". . . the former Uintah Indian Reservation. . ." (at first paragraph)
JX 423	Sept. 22, 1931	Letter from Director of forestry	"ceded" lands (at 2, line 7) ". . . the former Uintah Reservation. . ." (at 2, first full paragraph) "ceded" lands (at 2, second full paragraph)

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JX 424	Nov. 21, 1931	Letter from the Forester	"The balance of the area originally forming the large Uintah-Ouray Reservation of 3,972,490 acres is made up of Indian allotments, homesteads, and ceded lands. . ." (at 3, last paragraph)
JX 430	Oct. 14, 1933	Letter from Commr. of Indian Affairs	". . . the former Uintah Reservation."
JX 441	Apr. 18, 1938	Letter from Director of Lands	". . . the former Uintah and Ouray Indian Reservation." (at first paragraph) "ceded" lands (at first paragraph)
JX 443	November 1938	Report of Regional Forester-Grazing Resources on Uintah and Ouray Reservation	". . . the former Uintah and Ouray Reservation." (at 1, first paragraph; 5, #5; 6, last line) ". . . ceded lands. . ." (at 8, sixth and last paragraphs; 9, second, third, fifth and last paragraphs; 8-a, first paragraph; 10, fourth and fifth paragraphs; 11, first and fourth paragraphs)
JX 444	Jan. 24, 1939	Letter from Supt. of Uintah & Ouray Agency	"ceded" lands (at third paragraph)

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Doc. No.	Date	Type of Document	Status Reference
JX 450	June 19, 1941	Letter from Commr. of Indian Affairs	". . . the former boundaries of the Uintah and Ouray Indian Reservation. . ." (at 1, first paragraph)
JX 454	Jan. 27, 1947	Opinion of Interior Solicitor, 59 I.D. 393	"Allotments were made to Indians entitled to allotments within the area, and the balance of the lands . . . were restored to the public domain. . ." (at 393, second paragraph)
JX 455	Undated	Stipulations, *The Uintah and White River Bands of the Ute Indians v. United States*	". . . allotments in severalty . . . were made to the Uintah and White River Indians, and surplus lands . . . were restored to the public domain. . ." (at 10, last paragraph) ". . . the former Uintah Reservation. . ." (at 11, eighth line; 14, paragraph 22; 17, paragraph 25, 23, paragraph 26) ". . . the former Uintah Indian Reservation. . ." (at 15, first line; 15, paragraph 23; 17, third full paragraph)

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LD 200	Mar. 26, 1956	Letter from Asst. Secty. of the Interior, located in H. Rep. No. 2171, 84th Cong., 2d Sess. (May 16, 1956), at 4-6	". . . lands formerly a part of the Uintah Indian Reservation." (at 4, first paragraph of letter)
LD 200	Mar. 23, 1956	Letter from Asst. Attorney General, Lands Division, located in H. Rep. No. 2171, 84th Cong. 2d Sess. (May 16, 1956), at 6-8	". . . lands formerly a part of the Unintah Indian Reservation." (at 6, first paragraph of letter)
LD 200	Mar. 26, 1956	Letter from Acting Secty. of Agriculture, located in H. Rep. No. 2171, 84th Cong. 2d Sess. (May 16, 1956), at 8-10	". . . lands formerly a part of the Unintah Indian Reservation." (at 8, first paragraph of letter)
LD 201	Apr. 16, 1956	Letter from Asst. Secty. of the Interior, located in S. Rep. No. 2372, 84th Cong. 2d Sess. (June 27, 1956) at 3-5	". . . lands formerly a part of the Unintah Indian Reservation." (at 3, first paragraph of letter
LD 201	Mar. 26, 1956	Letter from Asst. Attorney General, Lands Division, located in S. Rep. No. 2372, 84th Cong. 2d Sess. (June 27, 1956) at 5-7	". . . lands formerly a part of the Unintah Indian Reservation." (at 5, first paragraph of letter)
LD 201	Mar. 26, 1956	Letter from Acting Secty. of Agriculture, located in S. Rep. No. 2372, 84th Cong. 2d Sess. (June 27, 1956) at 7-9	". . . lands formerly a part of the Unintah Indian Reservation." (at 7, first paragraph of letter)

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Doc. No.	Date	Type of Document	Status Reference
LD 201	Mar. 26, 1956	Letter from Director of Bureau of the Budget, located in S. Rep. No. 2372, 84th Cong. 2d Sess. (June 27, 1956) at 9	". . . lands formerly a part of the Unintah Indian Reservation." (at 9, fisrt paragraph of letter)
LD 203	July 14, 1956	P.L. 717, 70 Stat. 546, 548	". . . the former Uintah Reservation. . ." (Sect. 6, second line)
JX 469	Nov. 18, 1964	Memo from Solicitor	"In 1902, Congress provided for an allotment and restoration of the balance of unallotted land . . . to the public domain. . ." (at 2, third paragraph)
JX 482	Undated	Memorandum from Commr. of Indian Affairs	". . . the bulk of the unallotted lands of the Uintah and Ouray Reservation in Utah were to be restored to the public domain. . ." (at 1, first paragraph)
LD 210	Oct. 1, 1971	Secretarial Order, 36 Fed. Register, No. 198, p. 19920	". . . most of the unallotted lands of the Uintah and Ouray Reservation in Utah were restored to the public domain. . ." (at 10020, second column, first full paragraph)

APPENDIX D

IN THE UTAH COURT OF APPEALS

Case No. 910532-CA

ROOSEVELT CITY,
Plaintiff and Appellee,

v.

ROGER ROMAN GARDNER,
Defendant and Appellant.

Eighth Circuit, Roosevelt Department
The Honorable A. Lynn Payne

Attorneys: Joel D. Berrett, Roosevelt, for Appellant
Craig Bunnell, Roosevelt, for Appellee

OPINION

(Filed November 9, 1992)

Before Judges Billings, Greenwood, and Orme.

BILLINGS, Associate Presiding Judge:

Defendant Roger Roman Gardner pleaded guilty in Eighth Circuit Court to criminal mischief, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-106 (Supp. 1992), and unlawful possession and consumption of alcohol, a class B misdemeanor, in violation of Utah Code Ann. § 32A-12-209 (Supp. 1992), following the trial court's denial of defendant's motion to dismiss on juris-

dictional grounds. Defendant appeals, claiming the trial court lacked jurisdiction because he is an Indian and because Roosevelt, Utah, where the crimes took place, is in Indian country. We affirm.

Federal law provides for exclusive federal jurisdiction over Indians who commit crimes in Indian country, with some exceptions. *See* 18 U.S.C. §§ 1152-1153 (1988); *State v. Perank*, 191 Utah Adv. Rep. 5, 5 (Utah 1992). Defendant's jurisdictional challenge thus presents two issues: (1) whether defendant is an Indian,[1] and (2) whether Roosevelt, Utah is in Indian country.

The Utah Supreme Court recently held that a 1902 congressional act, as amended by 1903, 1904 and 1905 acts, restored the unallotted, unreserved lands of the Uintah-Ouray Indian Reservation to the public domain, diminishing the reservation boundaries. *See Perank*, 191 Utah Adv. Rep. at 18. In so doing, the supreme court disagreed with the decision of the United States Court of Appeals for the Tenth Circuit in *Ute Indian Tribe v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied*, 479 U.S. 994, 107 S. Ct. 596 (1986). *See Perank*, 191 Utah Adv. Rep. at 22 (Zimmerman, J., dissenting).

The supreme court's decision in *Perank* held that Myton, Utah lies outside the boundaries of the reservation and is not within Indian country. *See id.* at 18. In *State v. Coando*, 191 Utah Adv. Rep. 25 (Utah 1992), decided the same day as *Perank*, the supreme court stated that, under the reasoning of *Perank*, Roosevelt, Utah also lies outside Indian country. *See Coando*, 191 Utah Adv. Rep. at 26.

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[1] We do not address whether defendant is an Indian for purposes of federal jurisdiction because we conclude defendant did not commit the crimes in Indian country.

[2] We note that the issue we decide today is currently the subject of injunctive proceedings in the United States District Court for the District of Utah and a petition for certiorari in the United States Supreme Court. *See* Minute Entry in *State v. Perank*, No. 860243 (Utah August 4, 1992).

Thus, because defendant committed the crimes in Roosevelt, Utah, which is not in Indian country under controlling Utah law, the circuit court had subject matter jurisdiction. We, therefore, affirm defendant's convictions.

/s/ Judith M. Billings
JUDITH M. BILLINGS
Associate Presiding Judge

WE CONCUR:

/s/ Pamela T. Greenwood
PAMELA T. GREENWOOD
Judge

/s/ Gregory K. Orme
GREGORY K. ORME
Judge